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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 RYAN W. PAYNE,

11 Defendant.

Case No. 2:16-cr-00046-GMN-PAL

ORDER

(Sealed *Ex Parte* Mots. for Subpoenas –
ECF Nos. 2783–85)

12 This matter is before the court on Defendant Ryan W. Payne’s Sealed *Ex Parte* Motions
13 for Subpoenas (ECF Nos. 2783, 2784, 2785), which were filed pursuant to Rule 17 of the Federal
14 Rules of Criminal Procedure and LCR 17-1 of the Local Criminal Rules of Practice. These
15 Motions are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 and
16 1-7(g) of the Local Rules of Practice.

17 The motions ask the court to issue subpoenas to three employees of the United States
18 Department of the Interior, National Park Service, United States Fish and Wildlife Service, and/or
19 Bureau of Land Management (“BLM”) to compel their testimony in a continued evidentiary
20 hearing before the Honorable Chief Judge Gloria M. Navarro on Friday, November 3, 2017, at
21 8:00 a.m. The court has reviewed the motions and finds that Mr. Payne has met his threshold
22 burden under Rule 17 for issuance of the subpoenas. In addition, the court has already found that
23 Mr. Payne is indigent. Accordingly, the court will grant the motions and issue the subpoenas to
24 the following individuals: Randy Lavasseur, Zachary Oper, and Pamela Smith. In granting the
25 request, the court expresses no opinion regarding the admissibility or the scope of the witnesses’
26 proposed testimony as that is an issue for Judge Navarro to consider.

27 However, the court does not find good cause for the motions or this order to remain *ex*
28 *parte* and under seal. *See Nixon v. Warner Comm’ns, Inc.*, 435 U.S. 589, 597 (1978) (recognizing

1 “a general right to inspect and copy public records and documents, including judicial records and
2 documents.”). Although ex parte applications are permissible in limited circumstances, they are
3 generally disfavored. *United States v. Daniels*, 95 F. Supp. 2d 1160, 1162–63 (D. Kan. 2000) (ex
4 parte applications permissible where source or integrity of evidence would be imperiled or trial
5 strategy disclosed); *United States v. Tomison*, 969 F. Supp. 587, 589–95 (E.D. Cal. 1997) (ex parte
6 applications permitted where a subpoena served on third party and notice would compromise trial
7 strategy). Defense counsel informed Judge Navarro and the government of their desire to
8 subpoena these individuals to testify at the continued evidentiary hearing in open court. *See* Oct.
9 25, 2017 Mins. of Proceeding (ECF No. 2782) at 2. Thus, disclosure to opposing counsel will not
10 compromise defense strategy.

11 Accordingly,

12 **IT IS ORDERED:**

- 13 1. Defendant Ryan W. Payne’s Sealed *Ex Parte* Motions for Subpoenas (ECF Nos. 2783,
14 2784, 2785) are **GRANTED**.
- 15 2. The Clerk of the Court shall UNSEAL Payne’s motions (ECF Nos. 2783, 2784, 2785).
- 16 3. The Clerk of the Court shall issue the proposed subpoenas (ECF Nos. 2783-3, 2784-3,
17 2785-3) to the following individuals commanding him or her to appear at the continued
18 evidentiary hearing before the Honorable Chief Judge Gloria M. Navarro on Friday,
19 November 3, 2017, at 8:00 a.m.: (1) Randy Lavasseur, (2) Zachary Oper, and
20 (3) Pamela Smith.
- 21 4. The Clerk of the Court shall deliver a copy of this Order and the subpoenas to the
22 United States Marshal.
- 23 5. The United States Marshal shall serve a copy of this Order and the subpoenas to the
24 designated federal official:

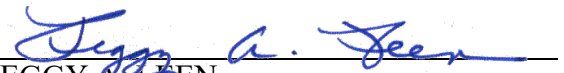
25 Special Agent Kent Kleman
26 BLM Office of Law Enforcement and Security
27 1387 S. Vinnell Way
28 Boise, Idaho 83709

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1 6. Pursuant to the court's September 11, 2017 Order (ECF No. 2351), Agent Kleman will
2 accept and serve the subpoenas to the federal employees named in this Order and
3 promptly inform defense counsel if process cannot be effected.

4 7. The United States Attorney's Office is not responsible for arranging for or reimbursing
5 the witnesses for travel, lodging, or expenses. See Order (ECF No. 2351), U.S.
6 Marshals Service, *Public Defender's Handbook*, available at
7 www.usmarshals.gov/prisoner/pdhandbook.

8 Dated this 26th day of October, 2017.

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11 PEGGY A. ZEEN
12 UNITED STATES MAGISTRATE JUDGE
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